

LIMITS TO CONFIDENTIALITY FOR GVSD SCHOOL COUNSELLORS – May 2017

Students have the right to confidentiality; it should only be breached if a child's safety is at risk and/or a crime may be committed. The guidelines of the Infancy Act allow that counsellors can, if they believe the child has the capacity and information to make an informed decision, support youth in making their own decisions in terms of medical supports. However, it is most often in the best interest of the child to have the family informed. A counsellor should consult if they believe there is reason to withhold information from a family that may relate to an immediate threat to the youth.

Questions:

- What are the limits to confidentiality for school counsellors, particularly in terms of informing parents/guardians?
- How does the Infancy Act affect School Counsellors?

Resources (see attachments):

- The Infancy Act
- The School Act
- BC Association of Clinical Counsellors Legal Commentary: Consent to Counselling Therapy Services – July 26 2013
- The BC School Counsellor's Code of Ethics
- Duty to Report: MCFD

Relevant Documentation:

1. Infancy Act:

- The Infants Act states that children may consent to a medical treatment on their own as long as the health care provider is sure that the treatment is in the child's best interest, and that the child understands the details of the treatment, including risks and benefits. It is up to the health care provider to assess and ensure the child's understanding of the treatment.
- An issue raised by the Infancy Act is whether a school counsellor can be considered at "health care provider"

2. BC School Act:

- 7 (1) A parent of a student of school age attending a school is entitled

(a) to be informed, in accordance with the orders of the minister, of the student's attendance, behaviour and progress in school, and

(b) [Repealed 2015-24-5.]

(c) to belong to a parents' advisory council established under section 8.

- (2) A parent of a student of school age attending a school may, and at the request of a teacher, principal, vice principal or director of instruction must, consult with the teacher, principal, vice principal or director of instruction with respect to the student's educational program.

3. BC Association of Clinical Counsellors Legal Commentary: Consent to Counselling Therapy Services:

- Section 17(1) defines a health care provider as: “ includes a person licensed, certified or registered in British Columbia to provide health care.” In turn, health care is defined as: “anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care”.
- Legal Commentary: “ While the counselling services counsellors provide fall within the scope of the definition of health care, because counselling has not yet been designated as a health profession under the *Health Professions Act*, it could be argued that clinical counsellors are thus not health care providers and therefore are not covered under section 17 of the *Infants Act*. On the other hand, the definition of a health care provider starts with the word ‘includes’ so it could be argued that clinical counsellors (AND THEREFORE SCHOOL COUNSELLORS – MY INCLUSION) are thus *not* excluded from this definition, even if they have not yet to be designated under the *health Professions Act*.
- Hubbart J noted in Ney v Canada (Attorney General): “A minor is capable of consenting to medical treatment to the extent that he or she can appreciate fully the nature and consequences of the medical procedure performed for her or his benefit. That common law rule has been little affected by the *Infants Act* which primarily fixes an age at which a child is deemed capable of consenting.”
- The common law does not fix any age, below which minors are automatically incapable of consenting to medical procedures. It all depends on whether the minor can understand what is involved in the procedure in question.

4. BC School Counsellor’s Code of Ethics:

- **Confidentiality**

Information received through the counselling relationship is confidential. The teacher-counsellor regards such information as confidential and does not voluntarily divulge such information without the student's prior consent.

This statement applies equally to interview notes, tapes of interviews, test data, and any other documents used to assist in the counselling process. Notes are to be kept as part of the counsellor's record, but not part of the records kept in the office of the school.

- **Exceptions:**
- **CONSENT:** With the consent of the student, the teacher-counsellor may divulge information received through the counselling relationship.
- **POTENTIAL HARM:** If behavior of the student threatens potential harm to him/herself or another person, the teacher-counsellor shall take appropriate action to protect the student and/or the other person.
- **CHILD PROTECTION:** A teacher-counsellor who has reason to believe that a child is or might be in need of protection shall forthwith report the information to the appropriate authorities in accordance with legal obligations pursuant to child protection legislation.
- **CONSULTATION AND COLLABORATION:** A teacher-counsellor may consult and collaborate with other professionals for purposes of more effectively helping the student. The teacher-counsellor shall share only such information that will serve the best interests of the student.
- **LEGAL REQUIREMENTS:** A teacher-counsellor may be required to provide records in compliance with the law.

5. BC Ministry of Children and Families Duty to Report:

- In most cases, your duty to report suspected child abuse or neglect overrides your duty to protect the privacy of clients, patients, students, staff or colleagues. The only exceptions are: » Solicitor-client privilege; and » Confidentiality provisions of the federal Youth Criminal Justice Act. If you report suspected child abuse or neglect, your name will be kept confidential, unless it is required for purposes of a court hearing. This is a requirement under the Child, Family and Community Service Act. Information about what is reported is shared with a child's or youth's family only to the extent needed to respond to concerns about the child's or youth's safety and well-being. You may also need to share information with other professionals, family members or a child's or youth's Indigenous community as part of a collaborative response to child abuse or neglect.